

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DELAWARE RIVER & BAY	)	
AUTHORITY,	)	
	)	
Plaintiff	)	
v.	)	C.A. No.
	)	
JAN D. KOPACZ,	)	
Defendant.	)	

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff, Delaware River & Bay Authority (hereinafter "DRBA"), by and through its attorneys, Rosenthal, Monhait & Goddess, P.A., hereby brings the following Complaint pursuant to 28 U.S.C. §2201, et. seq., seeking a Declaratory Judgment against defendant, Jan D. Kopacz (hereinafter "Kopacz"), and in support thereof avers as follows:

1. DRBA, a bi-state agency with its principal office in New Castle, Delaware, operates the ferry service which runs between Cape May, New Jersey and Lewes, Delaware.
2. Kopacz is a citizen of the State of Delaware and resides at 6 Bay Front, Milton, Delaware.
3. DRBA brings this action for declaratory judgment pursuant to 28 U.S.C. §2201. The action is within the original, maritime jurisdiction of the Court, 28 U.S.C. §1333.
4. At all times material hereto, Kopacz, was employed as a seaman onboard one of DRBA's ferries.
5. On or about December 24, 2004, Kopacz allegedly suffered an injury on the vessel during the course of his duties.

6. Pursuant to DRBA policy, Kopacz was paid his full salary for 90 days, after which he became eligible to receive 60% of his salary pursuant to a long term disability (hereinafter "LTD") policy purchased by the DRBA. Until recently, the monthly benefit was \$2,192.11.

7. DRBA has also paid all of his reasonable medical expenses directly or through a medical insurance policy purchased by the DRBA for employees.

8. On or about October 6, 2006, Kopacz was notified by the Social Security Administration ("SSA") that he was eligible for social security disability benefits from the federal government retroactive to July 2005. (SSA letter; Ex. A hereto.)

9. On or about October 12, 2006, Kopacz received a check in the amount of \$17,142.00 from the SSA in retroactive benefits, and since then has received monthly payments of \$1167.00.

10. As per the LTD policy, the LTD insurance company is entitled to offset any monies received from SSA against the benefits paid to Kopacz under the policy.

11. The LTD insurance company therefore has demanded of Kopacz that he repay \$16,607.92 in overpayments, and has advised Kopacz that it will reduce his monthly benefit to \$1070.11. (LTD demand letter; Ex. B hereto.)

12. Kopacz has taken the position that the DRBA must pay back the LTD overpayment and, going forward, that DRBA must pay him maintenance benefits under general maritime law to make up for the reduction of his LTD benefits.

13. Pursuant to general maritime law, DRBA is required to provide maintenance (actual living expenses) and medical treatment to Kopacz to the extent that it is not provided by others until such time as he reaches maximum medical improvement.

14. Kopacz has received and, once he repays the overpayment to the LTD carrier, will continue to receive a combined monthly living allowance from LTD and SSA which exceeds of his actual living expenses.

15. An unreasonable failure by the employer to provide adequate maintenance to an injured seaman can result in the imposition of consequential damages such as lost wages and any increased physical pain and suffering.

16. DRBA thus seeks a declaratory judgment that it is not required to repay the LTD insurance company for the overpayment to Kopacz, nor make any payments to Kopacz because he is receiving the equivalent of maintenance from the LTD insurance company and/or SSA.

17. In addition, DRBA seeks a declaratory judgment that it is not required to make any additional maintenance and cure payments to Kopacz because he has reached maximum medical improvement and would not benefit from any further treatment, other than pain management.

18. The parties have legally adverse interests and their controversy is substantial and immediate, and thus a declaratory judgment is appropriate.

WHEREFORE, Plaintiff, Delaware River and Bay Authority, demands judgment in its favor and against Defendant Jan D. Kopacz to the effect that it has no maintenance and cure obligations under general maritime law..

January 5, 2007

OF COUNSEL:

Mary Elisa Reeves, Esquire  
DONNA ADELSBERGER &  
ASSOCIATES, P.C.  
6 Royal Avenue  
P.O. Box 530  
Glenside, PA 19038-0530  
(215) 576-8690

ROSENTHAL, MONHAIT & GODDESS, P.A.

By: 

Carmella P. Keener (DSBA No. 2810)

Jeffrey S. Goddess (DSBA No. 630)

919 N. Market Street, Suite 1401

P.O. Box 1070

Wilmington, DE 19899-1070

ckeener@rmgglaw.com

jgoddess@rmgglaw.com

*Attorney for the Plaintiff,*

*Delaware River and Bay Authority*

# **EXHIBIT A**

10-15-06 23:54

Pg. 12

Fax from :

**Social Security Administration  
Retirement, Survivors and Disability Insurance  
Notice of Award**

Mid-Atlantic Program Service Center  
300 Spring Garden Street  
Philadelphia, Pennsylvania 19123-2992  
Date: October 6, 2006  
Claim Number: 577-62-5459HA

000487 MC3473 NJ 2.200

JAN D KOPACZ  
6 BAY FRONT ROAD  
MILTON, DE 19968-9537



You are entitled to monthly disability benefits beginning July 2005.

**The Date You Became Disabled**

We found that you became disabled under our rules on January 5, 2005.

However, you have to be disabled for 5 full calendar months in a row before you can be entitled to benefits. For these reasons, your first month of entitlement to benefits is July 2005.

**What We Will Pay And When**

- You will receive \$17,142.00 around October 12, 2006.
- This is the money you are due for July 2005 through September 2006.
- Your next payment of \$1,167.00, which is for October 2006, will be received on or about the third Wednesday of November 2006.
- After that you will receive \$1,167.00 on or about the third Wednesday of each month.

The day we make payments on this record is based on your date of birth.

Enclosure(s):  
Pub 05-10153  
Pub 05-10058

JANUARY 2007 RELEASE UNDER E.O. 14176

577-62-5459HA

Page 2 of 4

### Your Benefits

The following chart shows your benefit amount(s) before any deductions or rounding. The amount you actually receive(s) may differ from your full benefit amount. When we figure how much to pay you, we must deduct certain amounts, such as Medicare premiums. We must also round down to the nearest dollar.

Beginning Date	Benefit Amount	Reason
July 2005	\$1,099.60	Entitlement began
December 2005	\$1,144.60	Cost-of-living adjustment
January 2006	\$1,167.00	Credit for additional earnings

### Other Social Security Benefits

The benefit described in this letter is the only one you can receive from Social Security. If you think that you might qualify for another kind of Social Security benefit in the future, you will have to file another application.

### Your Responsibilities

The decisions we made on your claim are based on information you gave us. If this information changes, it could affect your benefits. For this reason, it is important that you report changes to us right away.

We have enclosed a pamphlet, "What You Need To Know When You Get Disability Benefits". It will tell you what must be reported and how to report. Please be sure to read the parts of the pamphlet which explain what to do if you go to work or if your health improves.

A provider of employment or vocational rehabilitation services may contact you about getting help to go to work. The provider may be a State vocational rehabilitation agency or a provider under contract with the Social Security Administration.

If you go to work, special rules allow us to continue your cash payments and health care coverage. For more information about how work and earnings affect disability benefits, call or visit any Social Security office and ask for the following publications:

- Social Security - Working While Disabled...How We Can Help (SSA Publication No. 05-10095).
- Social Security - If You Are Blind--How We Can Help (SSA Publication No. 05-10052).



577-62-5459HA

Page 3 of 4

**Do You Disagree With The Decision?**

If you disagree with this decision, you have the right to appeal. We will review your case and consider any new facts you have. A person who did not make the first decision will decide your case. We will correct any mistakes. We will review those parts of the decision which you believe are wrong and will look at any new facts you have. We may also review those parts which you believe are correct and may make them unfavorable or less favorable to you.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- You have to ask for an appeal in writing. We will ask you to sign a Form SSA-561-U2, called "Request for Reconsideration". Contact one of our offices if you want help.

Please read the enclosed pamphlet, "Your Right to Question the Decision Made on Your Social Security Claim". It contains more information about the appeal.

**If You Want Help With Your Appeal**

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due benefits to pay toward the fee.

**If You Have Any Questions**

We invite you to visit our website at [www.socialsecurity.gov](http://www.socialsecurity.gov) on the Internet to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-302-856-9620. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

**SOCIAL SECURITY  
20105 OFFICE CIRCLE  
GEORGETOWN, DE 19947**



Fax from :

Page 4 of 4

577-62-5459HA

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

*Jo Anne B. Barnhart*

Jo Anne B. Barnhart  
Commissioner  
of Social Security

# **EXHIBIT B**



October 27, 2006

Jan F. Kopacz  
6 Bay Front Road  
Milton, DE 19968

Policy Holder: Delaware River & Bay Authority  
Claimant: Jan F. Kopacz  
Policy Number: GLT674359

Dear Mr. Kopacz:

**This letter may contain information that is important for future tax reporting. Please keep this letter with your other important tax documents.**

This overpayment amount occurred in Tax Year(s) 2005 and 2006. For each Tax Year, the amount of overpayment is: \$16,607.92. The taxable percent of your benefit is 100%.

The reason for this overpayment is explained below.

As outlined in your LTD policy, your LTD benefit is subject to be reduced by Social Security Disability (SSD) benefit. Your monthly LTD benefit was \$2192.11. Your monthly Social Security Disability benefit is \$1099.60, then increased to \$1122.00. This has resulted in an adjusted monthly LTD benefit of \$1070.11 effective July 2005, the date of entitlement of your SSD benefits.

Date	Paid	Should have paid	Overpayment
7/05	\$2024.41	\$1009.49	\$1014.92
8/05	\$2192.11	\$1093.11	\$1099.00
9/05- 12/05	\$8,768.44	\$4,372	\$4,396
1/06	\$2192.11	\$1070.11	\$1122.00
2/06- 9/06	\$17,536.88	\$8,560.88	\$8,976
Overpaid amount due The Hartford Life Insurance Company			\$16,607.92

Further benefits will not be issued until we receive your full repayment. In order to settle this outstanding balance due The Hartford, please send a personal check or money order made payable to The Hartford in the amount of \$16,607.92 within fifteen (15) days of the date of this letter.

Please mail the payment to:

The Hartford Claim Recoveries

P.O. Box 30890

Hartford, CT 06101-8291

We are enclosing a self-addressed stamped envelope for your convenience.

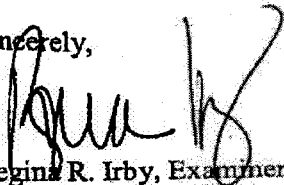
Benefit Management Services  
Syracuse Disability Claim Office  
P.O. Box 4871  
Syracuse, NY 13221-4871  
Fax (888) 839-6327

Fax from : 302 571 6305

11-22-06 12:30 PM

If you have any questions, please feel free to contact our office at (800) 538-0134, x55053. Our office hours are 8:00 AM to 8:00 PM EST, Monday through Friday.

Sincerely,



Regina R. Irby, Examiner  
Hartford Life and Accident Insurance Co.

CC: Thomas J. Murray

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS****DELAWARE RIVER AND BAY AUTHORITY**(b) County of Residence of First Listed Plaintiff New Castle  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number)  
**Rosenthal, Monhait & Goddess, P.A.**  
**PO Box 1070, Wilmington, DE 19899-1070****DEFENDANTS****JAN D. KOPACZ**County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) **E. Alfred Smith, Esq.**  
**219 Sugartown Rd. - Apt. D302**  
**Wayne, PA 19087****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input checked="" type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**28 U.S.C. §2201**

Brief description of cause:

**Declaratory judgment action concerning seaman's maintenance and cure.****VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/5/07

SIGNATURE OF ATTORNEY OF RECORD

(302) 656-4433

Jeffrey S. Goddess (No. 630)

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 07-008

**ACKNOWLEDGMENT**  
**OF RECEIPT FOR AO FORM 85**

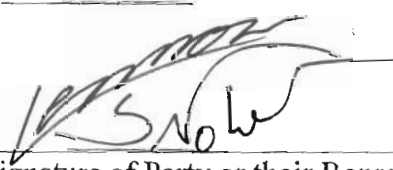
**NOTICE OF AVAILABILITY OF A**  
**UNITED STATES MAGISTRATE JUDGE**  
**TO EXERCISE JURISDICTION**

FILED  
CLERK U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
2007 JAN -5 PM 4:11

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

JAN 03 2006

(Date forms issued)

  
(Signature of Party or their Representative)

Lennon Snow  
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action